

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TAMALPAIS UNION HIGH SCHOOL
DISTRICT.

OAH Case No. 2014020947

ORDER FOLLOWING PREHEARING
CONFERENCE

On May 12, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Joy Redmon, Office of Administrative Hearings. Daniel Shaw, Attorney at Law, appeared on behalf of Student. Jan Tomskey, Attorney at Law, appeared on behalf of the Tamalpais Union High School District (Tamalpais). The PHC was recorded.

Based on discussion with the parties, the ALJ issues the following orders:

1. Hearing Dates, Times, and Location. The hearing shall take place at **395 Doherty Drive, Larkspur, CA 94941.**¹ It shall take place on May 20, 21, 22, and 23, and continue day-to-day thereafter at the discretion of the ALJ.² On May 20, 2014, the hearing shall begin at 9:30 a.m. and end at 5:00 p.m., and on the remaining days the hearing shall begin at 9:00 a.m. and end at 5:00 p.m., unless otherwise ordered.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing good cause to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

¹ At a minimum for the hearing the room shall have separate tables capable of being moved into a courtroom configuration, as follows: (1) one table for Student's representatives; (2) one table for the District's representatives; (3) one table for the ALJ with a nearby electrical outlet; and (4) one witness table. District shall ensure that all parties, witnesses, and the ALJ have drinking water and tissue available to them, and that the hearing room and other facilities that will be used during the hearing are accessible.

² May 23, 2014, is a Friday. Scheduling a Friday hearing date is at the discretion of the ALJ hearing the case. If the undersigned ALJ does not conduct the hearing in this matter, the ALJ hearing the case may decline to conduct the hearing on Friday, vacate this date, and set a different date.

2. Issues and Proposed Resolutions. The issues below were discussed at the PHC and reworded for clarity:

ISSUES

- Issue 1: Did Tamalpais fail to assess Student in all areas of suspected disability by:
- a) failing to conduct a cognitive assessment, including processing;
 - b) failing to conduct an assistive technology/augmentative communication assessment;
 - c) failing to conduct a social emotional functioning assessment;
 - d) failing to conduct a deaf and hard of hearing assessment; and
 - e) failing to conduct a transition assessment?
- Issue 2: Did Tamalpais fail to conduct assessments that met all legal requirements by:
- a) failing to conduct an adequate academic achievement assessment; and
 - b) failing to conduct an adequate speech and language evaluation?
- Issue 3: Did Tamalpais procedurally deny Student a free appropriate public education (FAPE) during the 2011-2012, 2012- 2013, and 2013-2014 school years by:
- a) failing to make a clear offer of FAPE; and
 - b) failing to conduct a triennial assessment in 2012?
- Issue 4: Did Tamalpais deny Student a FAPE during the 2011-2012, 2012-2013, and 2013-2014 school years, including the extended school years (ESY), by:
- a) failing to offer her an American Sign Language (ASL) interpreter;
 - b) failing to offer her a research based reading program;

- c) failing to offer her an appropriate social skills program;³
- d) failing to offer her ASL instruction;
- e) failing to offer her counseling services;
- f) failing to provide an appropriate educational placement;
- g) failing to provide her with adequate assistive technology;
- h) failing to provide her with measurable goals in all areas of need;
- i) failing to provide her with an appropriate transition plan;
- j) failing to provide accurate present levels of performance;
- k) failing to provide adequate aide services; and
- l) failing to implement goals?

PROPOSED RESOLUTIONS

Resolution 1: Tamalpais shall fund an independent assessment in the following areas:

- a) language processing;
- b) speech and language, including ASL;
- c) social/emotional functioning;
- d) assistive technology/augmentative communication; and
- e) transition.

Resolution 2: Tamalpais shall reimburse Student's parents for the following independent assessments:

- a) cognition; and
- b) academic achievement.

³ When the words "appropriate" or "adequate" are used in this issue statement, the question is whether the identified program or service met Student's unique needs and provided her with educational benefit.

Resolution 3: As compensatory education, Tamalpais shall provide the following:

- a) fund an English Language Intensive program at Gallaudet University for Student, that addresses transition skills, sign language, use of assistive technology, and academic deficits. Tamalpais shall fund all transportation costs associated with the placement;
- b) tutoring in all academic areas
- c) implement research-based academic programs, including independent living skills, speech and language therapy, sign language development, and social skills;
- d) assistive technology including hardware and software, and
- e) transition services.

Resolution 4: Tamalpais shall reimburse Student's parents for the costs of any educational services obtained, including transportation costs;

Resolution 5: Tamalpais shall implement all recommendations of the Marin County Office of Education including sign language interpreter, CART services, and provide Student with social skills/facilitated peer communication and adequate transition skills.

Resolution 6: Other relief deemed appropriate by the ALJ.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall use numbers to identify exhibits in a way that makes clear the party offering it (such as "S1" or "D2"). Each exhibit shall be internally paginated, by exhibit, or all pages of a party's exhibit binder shall be Bates-stamped or otherwise consecutively numbered. Each exhibit binder shall contain a detailed table of contents. Each party shall serve an exhibit binder containing its respective exhibits on the other party in compliance with Education Code section 56505, subdivision (e)(7). At the hearing, each party shall supply an exhibit binder containing its exhibits for use by the ALJ, and a second exhibit binder for use by witnesses. The parties may not serve exhibits on OAH prior to the hearing. In the event of duplicate exhibits, the most legible version will be used.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not included in the exhibit lists and not previously exchanged shall not be admitted into evidence at the hearing unless it is supported by a written declaration under penalty of perjury, and the ALJ rules that it is admissible.

4. Witnesses.

a) Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available to the other party. The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses twice or out of order. Neither party shall be permitted to call any witness not disclosed in the party's prehearing conference statement, except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

b) The parties are ordered to meet and confer by Friday, May 16, 2014, and prepare a joint proposed witness schedule. The tentative witness schedule shall identify the witnesses the party intends to call, as opposed to witnesses the party may call depending on the flow of the hearing and the evidence. Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for their testimony.

5. Scope of Witness Examination. After the first direct and cross-examinations, each party shall be limited in examining the witness to only those matters raised in the immediately preceding examination. The order in which the parties present their cases in chief shall be subordinate to the need for each witness to appear only once, so the parties shall be required to establish their cases in chief during the first appearance of a witness.

6. Telephonic Testimony. A party seeking to present a witness by telephone shall move in advance for leave to do so; shall provide the proposed witness with a complete set of exhibit binders from all parties, containing all of each party's exhibits, prior to the hearing; and shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness, and the witness to hear objections and rulings. Neither party requested telephonic testimony.

7. Electronic Recording of Hearing.

a. Audio Recording. At present, Student intends to make an audio recording of the hearing. The following conditions apply to any recording: 1) that OAH's recording is the only official recording; 2) that the recorder will be turned on and off at the same time as the ALJ's recording, to avoid recording conversations while off the record; and 3) the operation of the party's recording mechanism will not be allowed to delay the hearing.

b. Video Recording: No party, witness or anyone else present may make any video recording of any part of the proceedings. Any person doing so shall be subject to sanctions.

8. Motions. At this time, Student anticipates submitting a motion to preclude Tamalpais' experts from testifying. No other prehearing motions are pending or contemplated. Any motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not made prior to or during this prehearing conference.

9. Compensatory Education and Reimbursement. Any party seeking reimbursement of expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of expenditures, as part of its case in chief. Any party seeking compensatory education shall provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

10. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

11. Conduct of Counsel and Hearing Room Decorum. Counsel, all parties, and all witnesses shall conduct themselves in a professional and courteous manner at all times. Cellular phones, pagers, and other noisemaking electronic devices shall be shut off during the hearing unless permission to the contrary is obtained from the ALJ.

12. Special Needs and Accommodations. Student withdrew her request for an ASL interpreter to be present during the hearing. At present neither party anticipates the need for any special accommodation for any witness or party.

13. Hearing Closed To the Public. The hearing will be closed to the public.

14. Settlement. The parties are encouraged to continue their attempts to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. If a settlement is reached five days or fewer than five days before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH of that fact by telephone at (916) 263-0880. IF A FULL AND FINAL SETTLEMENT IS REACHED AFTER 5:00 P.M. THE LAST BUSINESS DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035, AND SHALL ALSO LEAVE CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY.

Dates for hearing will not be vacated until OAH receives a letter of withdrawal, or those portions of the signed agreement withdrawing the case, with signatures. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

15. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: May 12, 2014

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings